IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6531 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A A GANDHI,

Versus

GUJART WATER RESOURCES DEVELOPMENT BOARD,

Appearance:

1. Special Civil Application No. 6531 of 1987

MR GIRISH PATEL for Petitioner No. 1-3

MR PARESH UPADHYAY for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 05/03/2004

ORAL JUDGEMENT

This petition is filed by three persons and they have claimed in this petition for quashing and setting aside the decision of the respondent Corporation for not

absorbing them on permanent basis and also of artificial break and of making payment of 29 days only instead of 31 days and also of not granting other previleges and benefits.

2. Mr. Shrimali, learned advocate for Mr. Girish Patel, learned Senior counsel appearing for the petitioner has submitted that the petitioners were in the employment of the respondent Corporation right from the date of their joining either in the year 1978 or 1979, as the case may be. They were paid wages only for 29 days as against actual working of 31 days in the employment of the respondent Corporation. The petitioner were given initial appointment on the basis of which they resumed. Other employees appointed by the Corporation were paid wages for 31 days and the petitioners were denied this benefit. It was also stated that on behalf of the petitioners and other similarly situated persons, strike was called on 15.11.1986 and thereafter, settlement was arrived at between the Union and the respondent Corporation.

3. As per the said settlement, all daily wagers were required to be absorbed who had completed 5 years on permanent basis and they were required to be given identity cards and their other grievances were also required to be resolved. So far as their demand with regard to item No.2 and 7 are concerned, appropriate decision was agreed to be taken in due course. However, within the stipulated period, the said decision was not taken. Therefore, the petitioners were compelled to file the present petition before this Court seeking appropriate relief.

4. Mr. Shrimali has invited my attention to the terms of the settlement which was arrived at between the Union representing the petitioners and other similarly situated workmen and the respondent Corporation on 28.11.1986. He has also drawn the attention of the Court on the charter of demands submitted by the petitioners and other persons on 03.03.1987. However, no action has been taken by the Corporation and hence, present petition was filed. It is submitted that though the petitioners were appointed in the year 1978 - 79, the wages for the period of 31 days were not be given to them and hence, they have claimed for the declaration that they are entitled to the wages of 31 days with continuity of service and with all other consequential benefits.

5. Mr. Paresh Upadhyay, learned advocate appearing for the respondent Corporation has submitted that the

respondent Corporation has considered the demand of the petitioners and other similarly situated persons and a resolution was passed on 07.03.1991 whereby in all 93 persons were regularised. A detailed list of 93 persons was annexed along with the said resolution. Some of the persons whose names are mentioned in the said list are appointed even prior to the date of appointment of petitioners. He has, therefore, submitted that since 1991, the petitioners have been given the benefit of regular workcharge employees and hence, no grievance now survives in the petition.

6. I have considered the rival submissions made on behalf of the respective parties. I have also gone through the averments made in the petition as well as the resolution placed before the Court. It appears from the Resolution that in all 93 persons were given benefit of the said resolution and since 1991 onwards, all of them have been regularised. However, the resolution was totally silent with regard to the period prior to 1991 and admittedly, the petitioners have joined the respondent Corporation in 1978 - 79 and there was no dispute about the fact that wages for the period between 1978 to 1991 were not paid on the basis of 31 days. This Court is, therefore, of the view that the petitioners are entitled to the difference of 2 days wages and hence, the petitioners are hereby directed to make appropriate representation before the respondent Corporation and respondent Corporation is also directed to consider the said representation and if they have really worked for 31 days in a month or for the whole month during all these years, the respondent Corporation is directed to pay the difference of 2 days to the petitioners. As far as regularisation of the petitioners on their completion of five years in the respondent Corporation is concerned, the Court is restrained from giving any such direction in this matter as the legal position is well settled that Court should not give such direction for regularisation. In the present case, the respondent Corporation was established in 1976 and Government business was transferred to the respondent Corporation thereafter. In the year 1978 - 79, due to heavy workload, workcharge employees were recruited on temporary and adhoc basis without following the due procedure of law and without calling for the names from the employment exchange. Since their initial appointment was not found to be in accordance with the prescribed norms for recruitment or appointment, the direction for regularisation should not be given. However, the question regarding difference of two days wages is concerned, they are certainly entitled to and the respondent Corporation is directed to give the

said difference after ascertaining the necessary factual details either from their own record or on the basis of information supplied alongwith the representation that may be made by the petitioners. In any case, such decision may be taken and amount of difference of wages as stated above may be given to the petitioners within one month from the date of receipt of their representation.

7. With this direction, the present petition is disposed of. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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